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1 he was unaware or had no firsthand knowledge of the actual mechanics
2 or the actions that were taking place as they took place to fund the
3 loan.

4 Q What, if anything, was Mr. Montgomery asked about a company
5 called "United Forex Exchange" and his relationship with that
6 company?
7

8 A We went over, we had information that he was associated with a
9 company called United Forex, and that he advised us that he had been
10 introduced to United Forex by Jim Nava and Robert Skirving to Mike
11 Bradley and Darren Smith, and that United Forex was a currency
12 exchange company that -- excuse me. It dealt with currency exchange
13 and that Michael, Darren Smith and Michael Bradley were stock
14 brokers, which was a little inconsistent.
15

16 Q Is that what Mr. Montgomery told you about that?

17 A No, he told us -- let me, let me back up. The fact it was
18 inconsistent was an assumption on my part, that it's a foreign
19 currency exchange issue, but that there were stock brokers involved
20 in it.
21

22 Q Well, if we could, let's just stick to what Mr. Montgomery --

23 A Okay.

24 Q -- was saying. Well, what, if anything, did Mr. Montgomery
25 tell you about where he got the money from to buy the Bank of Saipan

1 stock?

2 A He advised us that it was a loan from United Forex of 2.8
3 million.

4 Q Now did you have the opportunity -- during the interview, did
5 you and the others have the opportunity to put questions to Mr.
6 Montgomery about a loan that he obtained for \$260,000?
7

8 A Yes, we did.

9 MR. SMITH: May I have a moment, Your Honor?

10 THE COURT: You may.

11 MR. SMITH: Your Honor, if we could just display
12 Government's Exhibit 27 for the jury, please?
13

14 THE COURT: You may.

15 Q BY MR. SMITH: Among the documents that you received from Ben
16 Fitia1 on March 7th, did you have a financial statement for Doug
17 Montgomery?
18

19 A Yes, we did.

20 Q And did you ask questions to Mr. Montgomery about the items on
21 his financial statement?

22 A Yes, we did.

23 MR. SMITH: And if, while I'm posing questions to Agent
24 Hewitt, if you could scroll for us forward to find the financial
25 statement, please.

1 Q Now in the package of materials that had come from the
2 Department of Commerce, submission that we saw before, Government's
3 Exhibit 28B, was there also a financial statement on that one?

4 A Yes, there was.

5 Q Okay. Which financial statement were you showing Doug
6 Montgomery and discussing with Doug Montgomery during your interview
7 on March 8th?

8
9 A There was a financial statement that I believe will come up
10 with this loan packet. We actually were looking at, looked at both
11 of them, but the discussion took place over a financial statement
12 which was part of a \$260,000 loan that Mr. Montgomery had received.
13 We went through, because it was the most recent one we had, we went
14 through it and discussed it with him.
15

16 MR. SMITH: Okay. And if we could get the two pages of
17 the financial statement side by side up on the screen? Do everyone
18 have that up on the screen now, the financial statement?

19
20 Q And let me just hand you a copy of Government's Exhibit 27 in
21 evidence, Agent Hewitt. Is this the financial statement you were
22 reviewing with Doug Montgomery during the interview?

23 A Yes. Yes, sir.

24 Q All right. Take a look at the top of each statement. Do you
25 see that the dates are different, Agent Hewitt? The one on the left

1 says February 1, 2002. And the one on the right says, February 1,
2 2001. See that?

3 A Yes.

4 Q What, if anything, was Mr. Montgomery asked about discrepancy
5 in the dates on these two pages?

6 A He advised that the date, February 1 of 2001 was a
7 typographical error that actually it represented February 1, 2002.
8

9 Q Was Mr. Montgomery asked who prepared this financial statement?

10 A Yes, he was.

11 Q And what did he say about that?

12 A He said that he prepared that financial statement.
13

14 Q Was Mr. Montgomery asked about whether he understood that the
15 Bank would look at this financial statement before they made a loan
16 to him?

17 A Yes, he was.

18 Q And what did he say about that?

19 A He believed that financial statement was not a deciding factor
20 on whether or not he would get the loan.
21

22 Q Now do you see there's an item on the right-hand side under
23 Accounts Receivable No. 2? It says, "Michael Wilson, \$7 million.

24 A Yes, uh-huh.

25 Q What, if anything, was Mr . Montgomery asked about the nature

of this item and accounts receivable?

A We went through accounts receivable, and I asked him if he understood what an account receivable was, and he stated, "when somebody owes you money." In this particular situation he disclosed that Michael Wilson owes him \$7 million.

Q And were any follow-up questions put to Mr. Montgomery about the nature of this \$7 million account receivable?

A Mr. Montgomery advised us this was a verbal agreement he had with Michael Wilson as part of an ongoing agreement that he was in conversations and negotiations he had with Michael Wilson involving EVSI, which was Electronic Valet Systems, I believe, Incorporated.

Q Well, what did you ask him about the nature of this \$7 million?

A Well, as accounts receivable are generally a legal debt, that somebody owes you and particularly in general accounting terms and for people who review financial statements, accounts receivable are collectibles. They're pretty fluid or pretty liquid. As a matter of fact it's not unusual for businesses to pledge their accounts receivable to a bank in order to obtain a loan because a bank then just collects the payments on the accounts receivable.

In this case, there's no written document. It was just a verbal agreement he and Michael Wilson had, that Michael Wilson would give him \$7 million based on this contract that Mr. Montgomery

1 had with the government of Mexico.

2 Q Is that what Mr. Montgomery told you in the interview?

3 A Yes.

4 Q Did you ask, or was Mr. Montgomery asked directly whether or
5 not he had a written contract with Michael Wilson on the EVSI, or
6 Electronic Valet deal?

7
8 A He was specifically asked. He said he didn't have a written
9 contract, but he intended to get one put together, a written
10 contract or agreement, but he intended to get one put together.

11 Q Now was Mr. Montgomery asked about a listing on here for Bank
12 of Saipan's stock under other assets. You see that --

13
14 A Yes, he was.

15 Q -- moving down?

16 A Item No. 5.

17 MR. SMITH: If you could blow that up, please.

18 Q And how much is he saying that's worth on his financial
19 statement?

20
21 A He says it's worth \$3,099,996.

22 Q Now was Mr. Montgomery asked about that on his financial
23 statement in connection with funds received from United Forex
24 Exchange?

25 A Yes. If you'll remember, Mr. Montgomery told us he had

1 borrowed 2.8 million to buy the shares of stock at Bank of Saipan,
2 and that he now owed, and that the share were used to collateralize
3 the loan from United Forex. Well, if you look on here, there's no
4 entry to indicate that of this \$3,099,996.00, 2.8 million of it is
5 actually belonging or had been pledged to United Forex. When you
6 present your card, you tell somebody, "I have a \$20,000 car but you
7 owe \$19,000 on it, you really can't tell them that it's -- might be
8 worth \$20,000, but if they were to pay you \$20,000, you don't get
9 \$1,000 in your pocket after you paid off the Bank.
10

11 MR. SMITH: Well, let's shrink this down.

12 Q And on Mr Montgomery's assets, is there a listing for a 2.8
13 million -- withdrawn. On Mr. Montgomery's liabilities, is there a
14 listing for a \$2.8 million debt to United Forex Exchange, looking at
15 the document?
16

17 A Right, I am. There is, there's no, there's nothing on here
18 that indicates that there's \$2.8 million offset against that three,
19 what appears to be a \$3 million value of that stock. Another way to
20 have shown it would have been to have the value of it reduced by the
21 amount of the outstanding debt. And in other words, and as we asked
22 Mr. Montgomery, it's misleading. It makes you believe that he's got
23 \$3 million in Bank of Saipan's stock when in fact he doesn't, you
24 know. At this point in time, he might have about \$300,000 in equity
25

1 in the Bank of Saipan's stock.

2 Q Let me just stop you there. Was Mr. Montgomery asked directly
3 about why it was that the \$2.8 million was nowhere to be found, \$2.8
4 million debt to United Forex was nowhere to be found in his
5 financial statement?

6 A Yes, he was.

7 Q And what did he say?

8 A He just said that he didn't --

9
10 MR. PARSONS: Object.

11 THE COURT: Excuse me. There's an objection.

12 MR. PARSONS: I'm sorry. Leading, sir. Calls for --

13 THE COURT: Sustained.

14 MR. PARSONS: -- a "yes" or "no." Yes.

15 THE COURT: Sustained.

16
17 Q BY MR. SMITH: Agent, Hewitt, tell us what Mr. Montgomery was
18 asked about the absence of the United Forex Exchange \$2.8 liability,
19 if anything at all was asked about that subject.

20
21 A Mr. Montgomery was asked if the \$2.8 million debt to Bank of
22 Saipan was disclosed within his financial statement and he said,
23 "No."

24 Q To Bank of Saipan or United Forex Exchange?

25 A Oh, I'm sorry. Excuse me. That United Forex Exchange debt as

1 it relates to the Bank of Saipan's stock.

2 Q What, if anything, did he say about the importance of the
3 absence of that disclosure?

4 A Again, in the course of the questioning, we asked him, does he
5 understand that, that's, you know, the significance of it, and he
6 said that, "Yes, it's not on there and it does mislead people into
7 believing that he has a \$3 million equity in the Bank of Saipan's
8 stocks.
9

10 Q What, if anything, was Mr. Montgomery asked about this EVSI
11 contract that he's carrying and other assets as being worth
12 approximately \$24,200,000?
13

14 A The EVSI contract with Mexico involved a negotiation that Mr.
15 Montgomery had entered into with the Mexican Government to replace
16 paper food stamp coupons with an electronic ATM card, a debit card,
17 which would help to reduce the amount of fraud within the Mexican
18 Government and the use of food stamps within the Mexican Government,
19 and that he had signed a contract with an individual that would give
20 EVSI a chance of being the person or the entity that would implement
21 that program.
22

23 Q And what, if anything, was Mr. Montgomery asked about the
24 status of this contract with the Mexican Government and EVSI?

25 A Being familiar with contracts with governments, I asked him

1 what government entity has agreed to implement that? Is that
2 something the Mexican Government has agreed that they would
3 implement? And he indicated, "No, it hasn't been; it's not been
4 officially accepted by the Mexican Government." What it is is it's a
5 contract with an individual that they would go in and be the ones
6 who'd run that program.

7
8 Q Was Mr. Montgomery -- see the item that says, "Four times
9 projected earnings"?

10 A Uh-huh.

11 Q Was Mr. Montgomery asked whether or not there were any actual
12 earnings?

13 A He was asked and, no, there are no earnings of EVSI on the
14 contract with Mexico. That is projected earnings based on some
15 computations he did of what he estimated what would happen under
16 this contract.
17

18 Q About how long did the interview with Mr. Montgomery last on
19 March 8, 2002?

20 A A little over two hours, about two hours and ten minutes or so.

21 Q And in court today, have you related all of the statements that
22 Mr. Montgomery made or have you just answered the questions put to
23 you?
24

25 A No, I've just answered the questions that were put to me.

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1 THE COURT: And the record as well will reflect that the
2 defendants, the three defendants are also present this afternoon.
3 Will the foreman, please rise at this time? Has jury reached a
4 verdict, Mr. Foreman?
5

6 THE FOREPERSON: Yes, we did.

7 THE COURT: Okay, is the verdict signed and dated?

8 THE FOREPERSON: Yes, it is.

9 THE COURT: Present the verdict form to the bailiff, please.
10 Thank you, Madam Clerk.
11

12 Will the defendants, please, rise?

13 At this time I would ask the Madam Clerk to publish the
14 verdict.
15

16 THE CLERK: Ladies and gentlemen of the jury, please listen
17 to your verdict as it will be read and recorded. In the United
18 States District, Northern Mariana Islands in Criminal Case 02-00010,
19 *United States of America, plaintiff vs. Bert Douglas Montgomery,*
20 *DuSean Berkich, and Tomas B. Aldan.*
21

22 As to defendant Bert Douglas Montgomery. Verdict. We, the
23 jury, render the following unanimous verdict as to the defendant
24 Bert Douglas Montgomery in this cause. As to Count 1, Conspiracy to
25 Commit Wire Fraud: Guilty. As to Count 2, Wire Fraud on or about
November 8, 2001: Guilty. As to Count 3, Wire Fraud on or about

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1 December 20, 2001: Not guilty. As to Count 4, Wire Fraud on or
2 about January 8, 2002: Guilty. As to Count 5, Wire Fraud,
3 Deprivation of Honest Services on or about January 11, 2002: Guilty.
4 As to Count 6, Money Laundering Conspiracy: Guilty. As to Count 7,
5 Money Laundering on or about November 28, 2001: Guilty. As to Count
6 8, Money Laundering on or about December 4, 2001: Guilty. As to
7 Count 9, Money Laundering on or about December 10, 2001: Guilty.
8 Signed by the jury foreperson, dated June 18, 2003. Certification:
9 "I, as a foreperson, certify that the above decision represents the
10 unanimous verdict of each and every juror in this cause." Signed
11 again by the foreperson and dated June 18, 2003.

12 "Verdict form in the same case, defendant DuSean Berkich.
13 Verdict. We, the jury, render in the following unanimous verdict as
14 to defendant DuSean Berkich in this cause. As to Count 1,
15 Conspiracy to Commit Wire Fraud: Guilty. As to Count 2, Wire Fraud
16 on or about November 8, 2001: Guilty. As to Count 3, Wire Fraud on
17 or about December 20, 2001: Not guilty. As to Count 4, Wire Fraud
18 on or about January 8, 2002: Guilty. As to Count 6, Money
19 Laundering Conspiracy: Guilty. As to Count 7, Money Laundering on
20 or about November 28, 2001: Guilty. As to Count 8, Money Laundering
21 on or about December 4, 2001: Guilty. As to Count 9, Money
22 Laundering on or about December 10, 2001: Guilty. Signed by the
23
24
25

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FILED
Clerk
District Court

AUG 29 2005

For The Northern Mariana Islands
By _____
(Deputy Clerk) *[Signature]*

FAX IN
6/9/06/05

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	
									UNITED STATES OF AMERICA,)																
)																
									Plaintiff)																
)																
									v.)																
)																
									BERT DOUGLAS MONTGOMERY,)																
)																
									Defendant)																
)																

Criminal No. 02-00010

ORDER AFTER
LIMITED REMAND
DENYING RESENTENCING

THIS MATTER is before the court on limited remand from the U.S. Court of Appeals for the Ninth Circuit, for the court to determine "whether the sentence imposed would have been materially different had the [] court known that the sentencing guidelines were advisory." United States v. Ameline, 409 F.3d 1073, 1074 (9th Cir. 2005) (*en banc*). The mandate issued August 18, 2005.

THE COURT has reviewed the court file, the presentence report, and the sentence imposed upon defendant, and also has an independent recollection of the

1 salient facts of this jury trial. The court would not have imposed a materially different
2 sentence had it known the sentencing guidelines were advisory, and it declines to
3 resentence defendant Montgomery for the following reasons.

4
5 This defendant's primary role in the intentional fraud perpetrated on the Bank
6 of Saipan resulted in direct injury to thousands of bank depositors, including the
7 Commonwealth government, all of whom lost access to their savings. The indirect
8 injury caused to the families of individual account holders and to the creditors of
9 business account holders was significant and still reverberates in the community as the
10 Bank has continued in receivership since May of 2002. The cold, calculating nature
11 of the crime and the financial losses and inconvenience caused to so many victims
12 warranted the sentence imposed.

13
14
15 Should defendant wish to appeal this order, he "may file a notice of appeal as
16 provided in Fed.R.App. 4(b)." United States v. Ameline, 409 F.3d at 1085.

17
18 DATED this 29th day of August, 2005.

19
20
21
22 
23 ALEX R. MUNSON
24 Judge
25
26

1 grounds offered by the defense to do so. Koon states that you look
2 to see whether the particular factor is within the heartland given
3 all the facts of the case.

4 Your Honor, Mr. Montgomery is 65 years old. If this court
5 sentences him to 20 years --

6 THE COURT: I think you already made this argument. In
7 fact you made a recommendation for 10 years. Am I correct?
8

9 MR. BERLINE: I did, Your Honor.

10 THE COURT: Okay.

11 MR. BERLINE: But given the fact that we didn't get our
12 adjustments, I'd like to revise that.

13 THE COURT: All right, you can be heard.

14 MR. BERLINE: Thank you. That if this court sentences him
15 to 20 years, that he will die in prison, Your Honor.

16 THE COURT: Well, that's your characterization.

17 MR. BERLINE: He has, although he seems to be in good
18 health now, he does have diabetes. He does have hernia. And there
19 is provisions in the Sentencing Guidelines that, although
20 disfavored, allow the court to deviate based on age along with
21 infirmity.
22
23

24 Moreover, Your Honor, Mr. Montgomery did not personally
25 benefit. The money went to Mr. Wilson. Mr. Wilson paid off his

1 debt and has been sentenced to three years. Mr. Montgomery, without
2 benefiting or profiting in any way, --

3 THE COURT: Mr. Wilson hasn't --

4 MR. BERLINE: I'm sorry. Mr. Montgomery, without
5 benefiting --

6 THE COURT: No, but Mr. Wilson hadn't paid off his debt.

7 MR. BERLINE: The \$5 million went to many of his personal
8 debts, Your Honor.
9

10 THE COURT: Oh, his -- I'm sorry. I thought you meant his
11 debt to the Bank that --

12 MR. BERLINE: Oh, no, Your Honor.

13 THE COURT: The ordered restitution. All right.
14

15 MR. BERLINE: Mr. Montgomery is looking at 20 years, and he
16 never profited from any of this. And that's where it just doesn't
17 make sense, Your Honor. And that's where the combination between
18 him not personally benefiting from these crimes and his age of 65
19 years add the disparity between the sentences, I think gives ground
20 for this court to grant some leeway here.
21

22 Your Honor, if this court sentences Mr. Montgomery to 12
23 years, he will be out when he is 77 years old. He will not be a
24 danger to the community at that time. He will have paid a fair and
25 reasonable price for these actions, Your Honor. We ask that this

1 policy statement. There's just no evidence to support this, this
2 application. So the court should deny it and impose a sentence
3 within the guideline range as found by they court.

4 THE COURT: Thank you. Before the court rules on -- I'm
5 sorry.

6 MR. BERLINE: Your Honor, real brief. What we, what our
7 point is, is that Mr. Montgomery -- I don't think that the
8 sentencing guideline is, talks about putting someone who, a
9 reasonable, normal everyday fraud defendant, money laundering
10 defendant, gets sentenced to 20 years in jail. The everyday
11 participants, probably 30, 40, 50 years old. I don't think the
12 sentencing guideline talks about somebody who is, will die in prison
13 as a result of a white-collar crime, Your Honor. And that's our
14 point. We understand that the sentencing guideline allows for age
15 plus infirmity, although it's disfavored. But our point is it
16 doesn't talk about when, a point when a defendant has been convicted
17 of a nonviolent crime that does not involve drugs, bodily harm,
18 anything like that, and ends up spending the rest of his living days
19 in prison, Your Honor. That's our basis. Thank you.
20
21
22

23 THE COURT: Thank you. Before the court rules on the
24 motion for downward departure, I want to give Mr. Montgomery an
25 opportunity to make his allocution or tell me anything that he

the mistakes that we made.

1
2 Now I am 65 years old. I've never been in trouble. It's
3 hard to face the fact that you're failing your family. I believe
4 that's why Mr. DuSean took his life. He'd called and he told me
5 that he was going to. That's why I took him to movies. I would
6 like an opportunity to get out of the jail and possibly give
7 something back to society. I'm getting up in age. If you feel it
8 in your heart to give me that, I would certainly appreciate it, and
9 I will do whatever I need to do to try to pay back and give
10 something back to society in the few years that I have. That's all
11 I have to say. Thank you.
12

13 THE COURT: At this point because of the time, we will take
14 a recess and we will reconvene -- what is our schedule?
15

16 THE DEPUTY CLERK: We have a 3:00 o'clock and a 3:30, Your
17 Honor.

18 THE COURT: The 3:00 o'clock is the arraignment?

19 THE DEPUTY CLERK: Yes, Your Honor.

20 THE COURT: The 3:30 is what?

21 THE DEPUTY CLERK: Sentencing that we postponed this
22 morning.
23

24 THE COURT: We'll reconvene at 4:00 o'clock in this
25 courtroom and the court will impose sentence at that time. Being